

**State of Hawaii**  
**Department of Land and Natural Resources**

**Public Hearing Notice**

**For the Repeal of Hawaii Administrative Rules, Title 13, Subtitle 7, Chapter 190 and to  
Adopt Proposed Hawaii Administrative Rules, Title 13, Subtitle 7, Chapter 190.1 as  
Required by the “Hawaii Dam and Reservoir Safety Act of 2007”, Chapter 179D HRS –  
Dams and Reservoirs**

The Department of Land and Natural Resources (DLNR) will hold statewide public hearings to Repeal Hawaii Administrative Rules, Title 13, Subtitle 7, Chapter 190 and to Adopt Proposed Hawaii Administrative Rules, Title 13, Subtitle 7, Chapter 190.1. To view the proposed draft rules, go to: [www.hawaii.gov/dlnr/rules](http://www.hawaii.gov/dlnr/rules).

The public hearings are scheduled as follows but not to exceed 2 hours:

| Island | Date                        | Location   | Time           |
|--------|-----------------------------|--|----------------|
| Kauai  | Tuesday, October 12, 2010   | Kauai War Memorial Convention Hall,<br>4191 Hardy Street, Lihue, Hawaii 96766                    | 4 pm -6 pm     |
| Oahu   | Wednesday, October 13, 2010 | Kalanimoku Building, Room 132 (DLNR Board Room)<br>1151 Punchbowl Street, Honolulu, Hawaii 96813 | 4 pm -6 pm     |
| Maui   | Thursday, October 14, 2010  | Maui Com. College, Laulima Room<br>310 Kaahumanu Ave, Kahului, Hawaii 96732                      | 10 am- 12 noon |
| Hawaii | Friday, October 15, 2010    | Waimea Civic Center<br>67-5189 Kamamalu St., Kamuela, Hawaii 96743                               | 10 am- 12 noon |

All interested persons are urged to attend the public hearing to present relevant information and individual opinion for DLNR to consider. Persons unable to attend or wishing to present additional comments may send written or e-mail comments to:

Email: [eyamada@iylllp.com](mailto:eyamada@iylllp.com)

Written testimony must be postmarked by Tuesday, October 26, 2010 and sent to:

Ishida & Yamada, LLLP  
888 Mililani Street, Penthouse 5  
Honolulu, Hawaii 96813  
Attention: Mr. Edsel Yamada

A copy of the proposed rule change packet is available on-line at <http://hawaii.gov/dlnr/rules>. Copies for public review are available Monday – Friday, 8 am – 4 pm, at DLNR Engineering Division, 1151 Punchbowl Street, Room 221, Honolulu, Hawaii 96813. Public may make written request for a mailed copy by indicating mailing address in correspondence sent to the address in the preceding paragraph.

Any person requiring a special accommodation (i.e. large print materials, sign language interpreters) should make a request by writing to the address in the preceding paragraph or by calling (V/T) (808) 587-0254. The request will need to be received at least 7 days before the hearing date.

Proposed repeal of Chapter 13-190 and the adoption of Chapter 13-190.1, HAR, Dams and Reservoirs are being done, as required by the Hawaii Dam and Reservoir Safety Act of 2007, to clarify some definitions, provide guidance on new construction of dams, alterations or removals of existing dams, clarifying certificate to impound application requirements, set the amounts for fees, establish minimum operational and physical requirements and related requirements to implement Chapter 179D HRS. The Board of Land and Natural Resources will be taking final action on this rule making at a future Board meeting.

The proposed new rules are summarized as follows:

§13-190.1-2: Definitions have been added and amended to reflect the changes to Hawaii Revised Statutes (HRS) Chapter 179D.

§13-190.1-3: Amends subsection 1 to more clearly define what type of highways or road fills are exempt.

§13-190.1-4: Adds a minimum design criteria to be followed.

§13-190.1-4.1: Adds additional design requirements.

§13-190.1-5: Increase daily fine from \$500 a day maximum to \$25,000 a day, and allows the Board to recover administrative fees and costs, including attorney's fees and costs and to bring legal action to recover those costs.

§13-190.1-5.1: Allows Criminal penalties as allowed under HRS §179D-8

§13-190.1-6: Board's approval or disapproval of an application are conclusive and binding except in the case of misrepresentation. The appeal of a Board decision will remain in effect until modified or set aside on appeal.

§13-190.1-7: Sets forth guidelines that will be followed for inspections.

§13-190.1-8: Requires that a change in ownership be filed within 7 days of recordation with the Bureau of Conveyances.

§13-190.1-9: Variance provision which allows the Board or department to grant a variance from any provisions of these rules.

§13-190.1-10: Adds a severability provision.

§13-190.1-11: Requires a certificate of Approval to Impound Water for all dams and reservoirs.

§13-190.1-12.1: Requires all dams to file an application for a certificate to impound water, allows owner to continue to impound water during the application process unless it is determined by the Board that the dam may pose a danger to the health and safety of persons or property.

§13-190.1-13: The department shall give notice to owners and requires that owners respond within 90 days of the notice.

§13-190.1-14: Sets forth Application Review process for a Certificate to Impound

§13-190.1-16: Allows the Board to suspend, revoke, or both any application approval to impound for any act or failure to comply with HRS Chapter 179D or any conditions contained or attached to the approval or Certificate to Impound.

§13-190.1-17: Transfer of Certificates to Impound must be approved by the Board under certain conditions.

§13-190.1-20 to §13-190.1-24: These sections sets forth the requirements for Construction, Enlargement, Repair, alteration, or removal of dams. §13-190.1-21: Sets forth specific requirements for the removal of a dam or reservoir.

§13-190.1-22: Requires that an engineer be in charge of the preparations of all plans and specifications.

§13-190.1-23: Sets forth the permit application approval process and states that the permit is valid for 5 years, and may be extended.

§13-190.1-24: Sets forth the causes that a permit maybe revoked.

§13-190.1-30 to §13-190.1-32: These sections set forth the construction requirements and the inspection and completion requirements.

§13-190.1-40: Allows inspections of dams not less once every 5 years, without notice. The department can require any necessary remedial work and all costs incurred for inspections shall be charged to the owner and become a lien if not paid within 30 days.

§13-190.1-40.1: Requires owners to have an operation and maintenance plan.

§13-190.1-41: Owner/operator to determine when an emergency exists and shall the emergency preparedness plan Allows the department to employ remedial measures necessary to protect life and property and to provide coordination and assistance to the other agencies to maintain control of any dam until the dam or reservoir is deemed safe and to take further actions necessary

§13-190.1-41.1: Allows the department to take certain steps following an emergency. §13-190.1-42: Amends the Emergency Action Plan by requiring that the plan be submitted to the Board for acceptance.

§13-190.1-43: Makes the costs of construction, enlargement, repair, alteration, or removal work done to render a dam, reservoir, or appurtenances safe a statutory lien.

§13-190.1-44: Allows the Department to apply to the circuit courts if in their judgment any person has or is about to engage in any act or practices that constitute or will constitute an unlawful action under Chapter 179D, HRS.

§13-190.1-45: Allows the department to issue an order to ensure public safety when multiple owners of a dam cannot agree as to a unified course of action for repair maintenance.

§13-190.1-46: Allows department the right to conduct investigations without notice and makes it unlawful for any person to refuse entry or access.

§13-190.1-50: Filing fees for all applications (new, expansion/alterations, or removals) based upon the estimated cost for the work at a rate of 2%.

§13-190.1-51: A Filling fee of \$400 for a certificate to impound.

§13-190.1-52: Annual fee shall be \$500 for each dam plus \$110 per foot of height. Any late payment shall pay a penalty of 10% of the annual fee plus interest at the rate of ½ percent per month.

#### BOARD OF LAND AND NATURAL RESOURCES

  
\_\_\_\_\_  
Laura H. Thielen, Chairperson

  
\_\_\_\_\_  
Date

#### PUBLICATION DATE(S):

Honolulu Star Advertiser:

The Garden Isle:

Maui News Today:

West Hawaii Today:

Hawaii Tribune-Herald:

CONTACT PERSON: Edsel Yamada 521-4576

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